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IN THE

Supreme Court of the United States

October Term, 1968

No. 9

BERNARD SHAPIRO, Welfare Commissioner of Connecticut
Appellant,

vs.

VIVIAN THOMPSON
Appellee

On Appeal from the United States District Court for the District of Connecticut

BRIEF OF AMICUS CURIAE ON BEHALF OF APPELLEE

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DIXIE PRINTING CO.—CA 3-5945

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INTEREST OF THE BEXAR COUNTY LEGAL AID ASSOCIATION

The Bexar County Legal Aid Association was established in 1952 as a non-profit organization to furnish legal services to those inhabitants of Bexar County, Texas, who cannot afford the services of private attorneys. The legal staff of the Association has training and practical experience in most areas of law of consequence to low income persons, including public assistance law.

Attorneys on the staff of the Association presently represent clients in San Antonio, Texas, who have been denied grants under the Federal-State Aid to Families with Dependent Children (AFDC) program.

Such denials have been based on the operation of the twelve month durational residence requirement contained in Article 695c, Sec. 17, Paragraph (2) of Vernon's Texas Civil Statutes.

Litigation has been instituted on behalf of clients of the Association in the United States District Court, Western District of Texas, San Antonio Division to test the validity of the Texas welfare residence requirements. *Alvarez v. Hackney*, Civil Action No. 68-18-SA (W. D. Tex., 1968). By order entered March 27, 1968, a three-judge court preliminarily enjoined defendants, officers of the Texas State Department of Public Welfare, from enforcing the residency requirement as it applied to plaintiff, Alvarez. Such injunction is presently being enforced pending the decision of this Court in the case at bar. The position of the State of Texas in the *Alvarez* case is identical to the position it asserts as *amicus curiae* before this Court.

The Bexar County Legal Aid Association, on behalf of its client, Angelina B. Alvarez, and on behalf of all its other clients situated similarly to Appellee in the instant case, files this brief *amicus curiae* for two purposes. First, to answer the arguments of *amicus curiae* State of Texas made both in this Court in the instant case and in the District Court in the Texas case, and further, to support Appellee's claims that the AFDC residence requirements violate both the Equal Protection Clause and the right to freedom of movement.

ISSUES AND RELEVANCE

In reply to the brief of the *amicus curiae* State of Texas, and in support of Appellee herein, the Bexar

County Legal Aid Association will argue that state statutes, such as that of Texas and Connecticut, which impose as a prerequisite to consideration of an application for welfare assistance, a requirement that the applicant be a resident of the state for a stated minimum period of time, violate both the Equal Protection Clause of the Fourteenth Amendment and the right of free movement protected by the Commerce Clause and by the Privileges and Immunities Clause of the Fourteenth Amendment.

Discussion of these issues by the Association is relevant to the instant case because, as the statutes of Connecticut and Texas are similar on the point at issue, the decision of this Court will, no doubt, determine the constitutionality of the Texas statute. This is especially true in light of the words of the three-judge Court in *Alvarez*, the residency case pending in Texas, in its March, 1968 order directing a preliminary injunction. The Court said:

> "In view of the complexities of this case,... the fact that at least two of the residency requirement cases are presently awaiting argument in the Supreme Court, and the further obvious fact that the Court's decision in those cases will be enlightening to this Court before making a final decision on the merits, additional time will be required for a full consideration of this cause."

This brief is filed with the written consent of attorneys of both Appellant and Appellee as required by Supreme Court Rule 42(2).

SUMMARY OF ARGUMENT

The brief will argue first that in light of the express purpose of the Aid to Families with Dependent Children program (AFDC) to provide assistance to needy families with dependent children, the one year residence period required by the statutes of both Texas and Connecticut creates an arbitrary classification proscribed by the Equal Protection Clause of the Fourteenth Amendment.

The brief will further argue that the subject residency requirements are additionally violative of the right of United States citizens to travel to and establish permanent residence in the state of their choice, a right protected by the Privileges and Immunities Clause of the Fourteenth Amendment and by the Commerce Clause of the United States Constitution.

ARGUMENT

POINT I

The residence requirements of both Texas and Connecticut create, in light of the purpose of AFDC legislation, an unreasonable classification among families and thus constitute a denial of equal protection.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution forbids any state "to deny to any person within its jurisdiction the equal protection of the laws." This constitutional

guarantee requires that all persons shall be treated alike under like circumstances and conditions. It is not here contended that the state may not classify when it legislates. The constitutional demand is not a demand that a statute or regulation necessarily apply equally to all persons. The Constitution does not require that things different in fact be treated in law as though they were the same. *Tigner v. Texas*, 310 U.S. 141, 147 (1939). Legislation and administrative regulations may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn must have "some relevance to the purpose for which the classification is made." *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966); *Baxstrom v. Herold*, 383 U.S. 107, 111 (1966); *Carrington v. Rash*, 380 U.S. 89, 93 (1965); *Brown v. Bd. of Education*, 349 U.S. 294 (1955); *Morey v. Doud*, 354 U.S. 457 (1957); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). In other words, there must be such a difference between the situation and circumstances of the members of the class and the situation and circumstances of all other members of the state as would present a just and natural reason for the difference made in their privileges and liabilities. Further, the difference upon which the classification is based, must be relevant "to the purpose for which the classification is made." *Rinaldi v. Yeager*, supra.

A relevant example of a clearly permissible classification is the one that permits "needy" families to receive welfare grants from the state. In that case there is clearly a difference between the circumstances of the needy

and all others and the difference is unquestionably related to the purposes of the legislation.

Turning to the instant case, it is necessary to review the legislation involved to determine if the classifications drawn by the states, discriminating as they do against newly arrived citizens, are in any way related to the purposes as expressed in AFDC legislation.

The Social Security Act of 1935 (49 Stat. 627) established the Federal Government's Aid to Families with Dependent Children program (AFDC). Under the act as amended, if a state passes legislation providing for AFDC and submits a program complying with federal requirements, the Federal Government will match, on an approximately three to one basis, each dollar the state appropriates for AFDC. The purpose of aid to dependent children as set forth in the Social Security Act, Title 42, U.S.C. Section 601, is to encourage:

> . . . the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services . . . to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. . .

Article 3, Section 51a, as amended, of the Texas Constitution and Article 695c, Section 6 of Vernon's Texas

Civil Statutes provide that the State Department of Public Welfare is to cooperate with the Federal Government for the purpose of carrying out the provisions of Title 42, U.S.C., Section 601-606.

The Texas AFDC statutes state that aid "shall be given. . . to any dependent child." Vernon's Texas Civil Statutes, Article 695c, Section 17, as amended. "Dependent child" is partially defined as:

> . . . any needy child. . . who has not sufficient income or other resources to provide a reasonable substistence compatible with decency and health... Vernon's Texas Civil Statutes, Article 695c, Section 17(6), as amended.

Of course, another paragraph of the Texas statutory definition of "dependent child" requires that the child have:

> . . . resided in this state for a period of at least one (1) year immediately preceding the date of application for assistance. . . Vernon's Texas Civil Statutes, Article 695c, Section 17(2), as amended.

On their face the statutes of Texas and Connecticut appear to be somewhat dissimilar. Texas gives aid to all "dependent children" but then simply defines that phrase to eliminate any child who has not resided in Texas for one year immediately preceding application for aid. (For those younger than one year old, the child must have been born in the state and have lived with an adult who has been living in Texas for at least one year immediately preceding application.)

The Connecticut statute requires satisfaction of the one-year residency requirement only by those arriving in Connecticut "without visible means of support for the immediate future" Conn. Gen. Stat. Section 17-2d. Because of the differences in statutory language, those new citizens arriving in the two states with the ability to support themselves and who then within a year lose that ability are treated differently. In Connecticut the originally solvent newcomer would appear to be immediately eligible for assistance; under the Texas statute, no matter what his economic status upon arrival, if the newcomer becomes "needy" during his first year in Texas, he is ineligible for aid.

While it thus appears that the Texas residency requirement eliminates a broader class of otherwise eligible applicants, the Connecticut statute is even more invidious in its discriminations. Texas discriminates bluntly between those citizens living in the state for more than one year and those not. Connecticut, however, adds to that classification a further discrimination among its new arrivals based on their apparent ability to support themselves.

Whatever their differences, the residency requirements of both states have the effect of creating at least two classes; first, a class of needy families, the members of which receive AFDC assistance, and second, a similar class of needy families who, because of recent arrival in the state, are ineligible for AFDC assistance.

The first issue thus presented to this Court is whether, in light of the purposes of federal and state welfare programs, such a classification is reasonable. *Mc-*

Laughlin v. Florida, 379 U.S. 184 (1964); *Carrington v. Rash*, supra. We contend that it is not.

The overall purposes of welfare legislation, whether federal or state, include public assistance to those in need, maintenance and strengthening of family life and the achievement of self-support and self-care. It is to us unquestioned that requiring an applicant to reside in a state for twelve months as a condition of eligibility for assistance, will serve not to promote the purposes of the legislation, but rather to erode those values the legislation attempts to advance. Circuit Judge Fahy, speaking for the three-judge District Court in *Harrell v. Tobriner*, 279 F. Supp. 22 (D.D. Col. 1967) noted this truth at page 27:

> "The spread over a year's time of the evils which public assistance seeks to combat may mean that aid, when it becomes available, will be too late. Too late to prevent the separation of a family into foster homes or Junior Villages; too late to heal sickness due to malnutrition or exposure; too late to help a boy from succumbing to crime."

In light of the fundamental purpose of welfare legislation—to provide assistance for members of the community who are in need—a provision which arbitrarily eliminates certain needy members of the community is constitutionally unreasonable. If a one-month resident is denied the assistance given a thirteen-month resident, although both are otherwise eligible, the newcomer is denied the equal protection of the law; such clearly different treatment has no reasonable relation to the basic legislative purposes.

The states however, argue that if the basic purposes are not served, still the residency requirement fulfills certain other valid needs. One argument made is that the requirement enhances the administrative effectiveness of the welfare program and is necessary for planning purposes. The evidence, however, simply does not support this contention. Welfare statutes contain many complex eligibility criteria and the elimination of the residency test would appear to reduce rather than increase the administrative work load. As the District Court in *Smith v. Reynolds*, 277 F. Supp. 65, (E.D. Pa. 1967) noted at page 68:

> "... all of the evidence is to the effect that many of the burdensome budgetary and administrative problems which are currently encountered by welfare officials in the conduct of the public assistance program would be substantially alleviated by the removal of this bottleneck in the processing of applicants."

Regarding predictability, it is noted that some states, including New York, have no residency requirement and they seem to be able to plan satisfactorily to meet welfare exigencies.

The states further argue that the residency requirement serves the legitimate state purpose of limiting the amount of money they must contribute to the AFDC program. Preserving the public purse may be a legitimate purpose in certain instances, but it is clearly impermissible to accomplish that end by arbitrarily singling out a class of persons to bear the entire burden. See, for

example, *Rinaldi v. Yeager*, 384 U.S. 305 (1966) where the Court held unconstitutional a New Jersey statute that allowed the state to withhold prison pay from unsuccessful appellants (to reimburse the county for the cost of their trial transcript) but which did not apply to those unsuccessful appellants who received a fine, a suspended sentence or who had been placed on probation. The Court said at page 309:

> "...We may assume that a legislature could validly provide for replenishing a county treasury from the pockets of those who have directly benefited from county expenditures. To fasten a financial burden only upon those unsuccessful appellants who are confined in state institutions, however, is to make an invidious discrimination."

A state could, to preserve funds, reduce further the payments made to all needy children to a level even below that which exists today; but failing that step backwards, there is no rational basis for imposing upon Appellee, her children, and other families in their class the total burden.

Further, the holding of the Court in *Edwards v. California*, 314 U.S. 160 (1941), bars a state from seeking to protect the public purse by excluding or hindering the entry of all nonresident indigents. In *Edwards*, the Court rejected the argument that the influx of poor migrants would impose severe costs on the state and held the statute to be an unconstitutional barrier to interstate commerce. While the residence requirements do not present as direct a barrier to commerce, it is significant that in *Edwards*, California's desire to protect its treasury did

not justify interference with the interstate movement of citizens. See, *Ramos v. Health and Social Services Board*, 276 F. Supp. 474, 477 (E.D. Wis. 1967).

The states contend additionally that a legitimate state interest exists in withholding public assistance from those citizen immigrants who arrive searching either for an initial grant or for a more favorable welfare climate. They argue first that such reasons for migrating ought not to be rewarded. Further, they argue that until the newcomers prove their intention to become permanent, contributing residents for purposes other than receiving aid, public assistance should be denied them.

Withholding aid in such a manner from all indigent newcomers creates however, a non-rebuttable presumption that every person applying for state help in their first year of residence is motivated to enter solely to obtain welfare. Such a presumption has no basis in fact. While it may be argued that *some* migrants choose a new home based entirely on welfare considerations, the overwhelming majority move for far different reasons. Some must follow employment; some, on doctors orders, move to a more healthful climate; and many, like Appellee in the instant case, and the plaintiff in the Texas case, migrate to be near relatives. But even assuming that many immigrants do base their choice of home on welfare considerations, and further assuming, without conceding, that the state can legitimately withhold welfare from such newcomers still the blunt method of attributing such economic purpose to *all* new arrivals cuts an unacceptably broad path of need.

A statute much less restrictive of human rights and much less discriminatory than residence requirements

could be drafted to select out those who enter a state solely to increase their government grant. Aid could be withheld from these few without denying assistance to many others who do not fit within the perimeters of the state's objection. See, Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 1966 Calif. Law Rev. 567.

Needy newcomers are no less needy because they are newly arrived. They are no less residents of the state because they have only recently begun to reside there, and they are no less entitled to enjoy the public welfare benefits of which every needy resident may partake simply because they have experienced their critical need soon after migrating to their new home. *Smith v. Reynolds*, 277 F. Supp. 65 (E.D. Pa. 1967).

The residency requirements of Texas and Connecticut create impermissible discriminations among residents in light of the purposes of federal and state AFDC legislation. Furthermore, the "legitimate" purposes of the classifications suggested by the states do not justify such unconstitutional discriminations.

POINT II

The residence requirements of both Texas and Connecticut interfere with the right of United States citizens to travel and settle in any state in violation of the United States Constitution.

Assuming logical behavior on the part of welfare recipients, residence tests for public assistance *prevent* the

interstate migration of persons unable to exist in their new home without immediate state aid. Further, residence tests *penalize* those indigents who do migrate for the fact of having moved interstate. It is the position of this brief that such statutory interference with the right of citizens of the United States to move about within the states is in violation of the United States Constitution.

Arguments supporting this contention may be based on several Constitutional provisions, including the Commerce Clause, the Privileges and Immunities section of Article IV, Section 2, clause 1, and the Privileges and Immunities Clause of the Fourteenth Amendment. It is not the intention of this brief to set out in detail all of the relevant arguments. However, a discussion of the major elements of such arguments is necessary in delineating the constitutional violation.

The case from which any analysis of welfare residence requirements and the freedom of movement must start, is *Edwards v. California*, 314 U.S. 160 (1941). There, a California statute, which made it a misdemeanor knowingly to bring a nonresident indigent into the state, was unanimously held unconstitutional. The five-judge majority relied on the Commerce Clause and held that the "statute must fail under any known test of the validity of State interference with interstate commerce." *Edwards*, supra at p. 174. Four justices concurring thought the state statute unconstitional because it infringed upon a freedom of interstate movement which they considered a privilege or immunity of a United States citizen guaranteed against state abridgment by the

Fourteenth Amendment. The majority did not find it necessary to reach that question.

In *Southern Pac. Co. v. Arizona*, 325 U.S. 761 (1945), the Court, in discussing the Commerce Clause stated at p. 767:

> "... ever since *Gibbons v. Ogden*, 9 Wheat, (U.S.) 1, the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority."

This attitude toward the Commerce Clause has been the position of the Court for many years. Further, the Court in *Edwards* specifically held that the constitutional definition of the word "commerce" included the transportation of persons. We are, therefore, left with no doubt regarding the protection the Commerce Clause offers for the interstate movement of people.

The states might argue that since *Edwards* dealt with a statute which *prohibited* migration, it has no applicability to the welfare residency requirements which "merely" place economic burdens on travel. However, the recent case of *United States v. Guest*, 383 U.S. 745 (1966) must be read as proscribing even the discouragement of interstate travel. In *Guest*, the Court upheld a paragraph of a federal indictment based on 18 U.S.C. 241 which outlaws conspiracy to interfere with rights or privileges secured by the Constitution. The relevant

paragraph alleged interference with and intimidation in the enjoyment of:

> "The right to travel freely to and from the State of Georgia and to use highway facilities and other instrumentalities of interstate commerce within the State of Georgia."

The Court explained that while there had been differences in emphasis on the Court as to the source of the constitutional right of interstate travel, "all have agreed that the right exists." The Court went on to say at p. 760:

> "If the predominant purpose of the conspiracy is to *impede* or prevent the exercise of the right of interstate travel, or to *oppress* a person because of his exercise of that right, then. . . the conspiracy becomes a proper object of the federal law under which the indictment in this case was brought." (Emphasis added)

It seems clear that the Court, by using the words "impede" and "oppress" intended to outlaw even the discouragement of the constitutional right.

Furthermore, two justices concurring in *Bell v. Maryland*, 378 U.S. 226 (1964) indicated their belief that state action is unconstitutional even if it merely hinders interstate movement. That case involved a Maryland trespass conviction for refusal to obey a racially motivated request to leave a restaurant. The Court reversed on other grounds, but Justices Douglas and Goldberg concurring, argued at p. 255 that the conviction was invalid state action violating the right to travel.

> "Is the right of a person to eat less basic than his right to travel, which we protected in *Edwards v. California*, 314 U.S. 160? Does not a right to travel in modern times shrink in value materially when there is no accompanying right to eat in public places?
>
> "The right of any person to travel *interstate* irrespective of race, creed or color is protected by the Constitution *Edwards v. California*, supra. Certainly his right to travel intrastate is as basic. Certainly his right to eat at public restaurants is as important in the modern setting as the right of mobility. In these times that right is, indeed, practically indispensible to travel either interstate or intrastate."

Of course, protections for the right of free movement can be found elsewhere in the Constitution. In *Edwards v. California*, supra, as noted above, four justices concurring in the result would have found that:

> "The right to move freely from State to State is an incident of *national* citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference." (at p. 178)

In other cases too this Court has restated that "freedom of movement is basic in our scheme of values." See *Crandall v. Nevada*, (U.S.) 6 Wall 35, 44 (1868); *Williams v. Fears*, 179 U.S. 270, 274 (1900); *Kent v. Dulles*, 357 U.S. 116 (1958); *Aptheker v. Sect'y of State*, 378 U.S. 500 (1964); *Zemel v. Rusk*, 381 U.S. 1 (1965).

There can be no doubt that an inevitable effect of welfare residency requirements, including those of Connecticut and Texas, is to deter indigents from moving between states and to penalize those who do. It is these effects which constitute an infringement of the freedom of movement in violation of the United States Constitution.

CONCLUSION

The order of the District Court for the District of Connecticut declaring the Connecticut AFDC residence requirement invalid, should be in all respects affirmed.

Respectfully submitted,

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